

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

-----:  
UNITED STATES OF AMERICA :

-vs- :

Case No. 1:09-cr-179

MIRWAIS MOHAMADI,  
Defendant. :

MOTIONS HEARING

February 26, 2010

Before: Liam O'Grady, Judge

APPEARANCES:

Ronald L. Walutes, Jr. and Michael P. Ben'Ary,  
Counsel for the United States

Whitney E.C. Minter and Jeffrey C. Corey,  
Counsel for the Defendant

The Defendant, M. Mohamadi, in person

1                   THE CLERK: Criminal case number 1:09-cr-179, the  
2 United States of America versus Mirwais Mohamadi.

3                   MR. WALUTES: Good morning, Your Honor. Ronald  
4 Walutes and Mr. Ben'Ary, Michael Ben'Ary has joined the  
5 Government to try this case.

6                   THE COURT: All right, good morning to you both.

7                   MR. MINTER: Good morning, Your Honor. Whitney  
8 Minter from the Public Defender's Office and Jeffrey Corey,  
9 pro bono counsel, on behalf of Mr. Mohamadi, who is present in  
10 custody.

11                  THE COURT: All right. Good morning to you all.

12                  Good morning, Mr. Mohamadi. Have a seat, sir.

13                  THE DEFENDANT: Good morning, Your Honor.

14                  THE COURT: All right, this comes on Mr. Mohamadi's  
15 motions to suppress, sever and exclude certain counts.

16                  I have read the pleadings of the parties. I have  
17 read the cases. I will hear anything you would like to say in  
18 addition.

19                  MR. MINTER: As a practical matter, Your Honor, at  
20 least for us and perhaps for the Government, I think which  
21 matter the Court wishes to take up first will dictate who the  
22 Court hears from first.

23                  THE COURT: Well, do you want to do Count 5 first?

24                  MR. MINTER: That's fine, Your Honor.

25                  THE COURT: All right.

1                   MR. MINTER: Your Honor, in large part we would rest  
2 on our pleading in that matter. However, there are a couple  
3 of points in the Government's response that I would like to  
4 address. The first of which is the alternatives that the  
5 Government poses to severance.

6                   It is certainly true as a practical matter that a  
7 bench trial could be held on this, and it is certainly true  
8 that a stipulation could be entered into, but both of those  
9 come at a cost to Mr. Mohamadi. To enter a bench trial gives  
10 up his right to a jury, which he has quite clearly indicated  
11 that he wishes to exercise.

12                  To enter into a stipulation is a double-edged sword.  
13 It limits the jury's knowledge to the fact that he has a  
14 conviction, but it then leaves the jury free to speculate as  
15 to what that prior conviction could be.

16                  In addition, it still tells them that he is a  
17 convicted felon, which is, of course, the primary source of  
18 the prejudice.

19                  And I think to some degree that is the sole issue  
20 that this motion boils down to, is prejudice. There is quite  
21 clearly, unquestionably prejudice associated with a prior  
22 conviction, and certainly a prior felony conviction.

23                  We have an entire Rule of Federal Evidence which is  
24 directed toward prohibiting, except in certain circumstances,  
25 a jury's knowledge or a trier of fact's knowledge of prior bad

1 acts, including prior conviction.

2                   And as an aside, as I mentioned in my motion, the  
3 Commonwealth of Virginia quite clearly agrees that there is  
4 prejudice involved and quite routinely endorses severance for  
5 purposes of this.

6                   Now, that is not to say that we are in Virginia or  
7 that this Court is controlled by Virginia law, but it  
8 certainly is relevant when we look to the issue of whether  
9 there is prejudice in allowing this evidence to come in at  
10 trial.

11                  The Government's arguments are certainly correct  
12 with respect to the Hawkins case. The Hawkins case is a Rule  
13 8 case. Hawkins essentially said that these cases never  
14 should have been joined in the first place. And in  
15 determining that, they discussed a number of the issues that  
16 the Government raises in their response. And they certainly  
17 talk about prejudice.

18                  But it is a different scenario than we have here.  
19 That is, the appellate court looking back to the misjoinder  
20 and determining whether that was a mistake. They certainly  
21 analyzed the prejudice, but they analyze the prejudice in a  
22 different manner, whether it resulted in an unfair trial.

23                  That is different than the issue posed under Rule  
24 14. The language of Rule 14 says, if joinder appears to  
25 prejudice a defendant.

1                   So, while Hawkins is certainly relevant and the  
2 entire reason that we cited it is because they reiterate, they  
3 point out, they address the prejudice that's involved in that  
4 prior conviction--

5                   THE COURT: Yeah, you had a carjacking where it was  
6 just one guy against somebody else saying who did it, and then  
7 all of a sudden you have got this separate firearm count from  
8 a different period in time not related at all.

9                   And so, they weighed it in several ways, in looking  
10 at it for misjoinder and looking at it for prejudice.

11                  MR. MINTER: That's correct, Your Honor. But I  
12 would submit that their evaluation of prejudice is different  
13 than our evaluation of prejudice at this stage because they  
14 were looking to whether it caused an unfair trial.

15                  So, of course, they look to all of the elements that  
16 the Government cited as additional prejudice because they had  
17 to take an overall look about whether an unfair verdict  
18 resulted as a result of that misjoinder.

19                  Certainly, Your Honor, we would rely on the  
20 pleadings filed earlier in this case that the Court has  
21 already ruled on that joinder is not appropriate in this case.  
22 But as the Court has ruled, and we have moved past that, the  
23 issue we address today is specifically whether Rule 14  
24 addresses this issue, and it does.

25                  And again, we rely on the Hawkins case quite simply

1 for one point, which is that the Hawkins case again addresses  
2 the issue of the prejudice of a prior conviction.

3                   If these cases were to be severed, we would admit  
4 that there would be some overlap in the testimony that was  
5 required to prove the 922(g) count versus the other counts  
6 involved in this case. However, the interesting thing is the  
7 evidence that needs to be repeated is only necessary to the  
8 extent to prove possession.

9                   And the Government quotes the Silva case as saying,  
10 if we were to sever them, we would have this one large trial  
11 and then this one very teeny trial that only addressed one  
12 minor, minor issue. And that--

13                   THE COURT: I don't think they said that at all.  
14 They said, we are going to have to retry the case. He used  
15 the weapon in the course of committing of the two robberies  
16 and that they are totally intertwined, the evidence would be  
17 the same, it would be a replay necessary if we sever it.

18                   MR. MINTER: I apologize, Your Honor, I didn't  
19 intend to quote the Government. Rather, to quote the Silva  
20 case which the Government quoted in its position.

21                   And essentially that is what the Silva Court  
22 implied, that it would be a very small trial simply to prove,  
23 if I can give the Court the language, one requiring two  
24 trials, one for a charge which requires little more than proof  
25 of possession and the existence of a prior record.

1                   And the Court does go on, admittedly, to say that  
2 that would be redundant, but the point is that's a  
3 double-edged sword for the Government as well. While it  
4 would, of course, necessitate two trials if they were severed,  
5 the second trial would by definition be a very short, concise  
6 trial. It would not require repetition of every bit of  
7 evidence that would go into the trial of the other nine  
8 counts.

9                   THE COURT: Well, the Government has to make that  
10 decision and how much evidence to put in in order to sustain  
11 its burden, which is a heavy one, beyond a reasonable doubt.  
12 And while you may think it might be a simple process, the  
13 reality as I look at this case is that it would be extensive  
14 testimony, repetitive testimony necessary, especially given  
15 the nature of the witnesses that are going to be coming  
16 forward. And I would expect significant overlap between the  
17 two trials.

18                   So, I understand you think it's-- This isn't the  
19 Silva case.

20                   MR. MINTER: And certainly, Your Honor, the  
21 Government would be entitled to call additional evidence and  
22 additional witnesses, but we would submit that that would not  
23 be necessary. And that to any extent they duplicated efforts  
24 beyond proving possession and a prior conviction, that would  
25 be their decision.

1                   Your Honor, the Government also argues that there is  
2 no or minimal prejudice to Mr. Mohamadi because the jury will  
3 already be hearing evidence of the acts that he is alleged to  
4 have committed. And in light of all of these arguably bad  
5 facts, a prior conviction can't possibly look that bad.

6                   Well, Your Honor, that's true in any case. Any time  
7 we stand here and the Government prosecutes someone, they are  
8 putting on evidence which alleges that they have committed a  
9 crime. By that standard, any time we accuse a defendant of  
10 committing a crime, we can just pile on and add additional bad  
11 acts, including prior convictions.

12                  That clearly can't be the case. Again, we have an  
13 entire federal rule dedicated to limiting that additional  
14 evidence.

15                  I would submit, Your Honor, that that argument  
16 doesn't hold weight simply because the Government has accused  
17 Mr. Mohamadi of doing things that are arguably bad things.

18                  Again, Your Honor, I would reiterate the difference  
19 between the appellate standard that appears in all of these  
20 cases that we see which requires that the prejudice involved  
21 denies the defendant a fair trial and point out, again, that  
22 we are at the point of Rule 14, if joinder appears to  
23 prejudice a defendant.

24                  There can be no question and no one can dispute that  
25 a prior felony conviction is a prejudice. I would ask the

1 Court to sever Count 5 from the remaining counts.

2 THE COURT: Thank you. Yes, sir.

3 MR. BEN'ARY: Thank you, Your Honor. Just to  
4 briefly address some of the points raised here.

5 And I think the Court to some extent hit the nail on  
6 the head with respect to what a severed trial for just Count 5  
7 would look like here.

8 And I certainly appreciate the suggestion that we  
9 should put only on a little bit of evidence to prove Mr.  
10 Mohamadi's possession of the firearm, but in this case I can  
11 submit to the Court and tell the Court that we would call all  
12 of the Government's witnesses that support Counts 1 through 4.  
13 That is the woman that the defendant robbed in the District of  
14 Columbia, the cab driver that the defendant robbed in  
15 Alexandria, and all of the witnesses that support the  
16 Government's overwhelming case that this defendant committed  
17 armed robbery.

18 Plus on top of that, we would have the one  
19 additional piece of evidence that the defendant is a convicted  
20 felon.

21 So, as the Fourth Circuit in Silva alluded to, it  
22 would involve all of this duplication of efforts, duplication  
23 of resources. And the Fourth Circuit has said quite clearly  
24 that that is not necessary.

25 With respect to the alternatives to severance that I

1 mentioned in my brief, Your Honor, we recognize that the  
2 defendant is not bound to agree to those measures. We simply  
3 mention them to point out that there are ways to ameliorate  
4 this risk of prejudice.

5 Certainly it is the defendant's choice if he doesn't  
6 want to agree to a bench trial, he has got every right to have  
7 a jury hear it. If he doesn't want to agree to a stipulation  
8 and put the Government to its proof, we are ready go on that  
9 as well, Your Honor.

10 They are just measures that are available to the  
11 defendant. We raise them to the Court to suggest that when  
12 the Court balances the risk of unfair prejudice here with  
13 duplication of resources, that the Court should come down in  
14 favor of the Government on this argument.

15 Just like the Silva Court talks about the use of  
16 jury instructions being ameliorative, Your Honor. Those are  
17 just ways that the Government would suggest that are available  
18 to curtail this risk of unfair prejudice.

19 With respect to the Government's point in its brief  
20 that the risk of prejudice in this case is slight if the jury  
21 learns that the defendant is a convicted felon. That isn't to  
22 say, Your Honor, that the Government is somehow arguing in  
23 this case that we should be able to prove that he is a  
24 convicted felon and use that proof with no limiting  
25 instructions and get up and argue to the jury, look, he is a

1 bad guy and, therefore, he should be convicted, you should  
2 find that he is the type of person that would commit these  
3 types of offenses.

4 That's not the Government's point. Of course it is  
5 going to be limited and the jury will have an instruction that  
6 they are only to consider it with respect to Count 5.

7 The Government's point in that argument, Your Honor,  
8 is just that the rest of the case is so strong and the  
9 defendant's actions are going to be proven some with video,  
10 and they are of such a nature that the risk that the jury is  
11 going to be shocked and use evidence of his prior conviction  
12 for an improper purpose in this case is slight, Your Honor.

13 And for those reasons, we would ask the Court to  
14 deny the defendant's renewed motion to sever Count 5.

15 THE COURT: All right. Well, this is very much  
16 unlike the Hawkins case, as the defendant concedes. And  
17 instead it is on point with Silva and the many other cases out  
18 of the Fourth Circuit where if duplication is necessary, then  
19 the Court looks differently at the case and really looks more  
20 closely at the prejudice that will flow from the admission of  
21 a prior felony conviction.

22 Here I agree with the Government that the  
23 duplication would be extensive, they would have to put the  
24 trial back on a second time with all of the witnesses. I  
25 mean, especially because they have seen the case tried in the

1 state court, a portion of the case tried in the state court  
2 where a hung jury resulted. Which clearly would present the  
3 Government with information which would argue that they were  
4 required, not just chose to put on a more extensive case.

5 So, you have a complete repetition of the trial for  
6 the one count, for the possession of the firearm. Considering  
7 the charges and the seriousness of the charges against Mr.  
8 Mohamadi, threatening to kill one of the witnesses who is a  
9 victim of the earlier robbery, and the knowledge by the jury  
10 that he is a convicted felon, is not going to unfairly  
11 prejudice him. There will be a limiting instruction given to  
12 the jury that they can only consider it as to Count 5.

13 We have excellent, educated jurors who follow the  
14 instructions of the Court, and I don't find unfair prejudice  
15 here.

16 So, I will deny again the motion to sever Count 5  
17 and note your exception.

18 All right.

19 MS. MINTER: If I may just briefly, Your Honor. I  
20 understand that the Court is ruling today on the motion that  
21 was filed on Mr. Mohamadi's behalf by our office. I would  
22 just advise the Court pursuant to your Court's ruling, Mr.  
23 Mohamadi also has a motion that he would like to file on his  
24 own and will do so at a later time regarding severance as  
25 well. I would just advise the Court of that at this time.

1                   THE COURT: All right, I will wait and receive that  
2 and consider it at that time.

3                   MS. MINTER: Yes, Your Honor.

4                   THE COURT: All right. There is also the motion to  
5 suppress certain testimony and sever counts on Sixth Amendment  
6 grounds.

7                   MR. COREY: Yes. Good morning, Your Honor. I will  
8 be addressing that motion. Mr. Jeff Corey for the defendant.

9                   Just to start off, Your Honor, this is not the same  
10 motion that was filed earlier.

11                  THE COURT: I understand, but we are in a new  
12 position. You have read the Government's motion, I am sure.  
13 They have attached the evidence of the testimony in the prior  
14 trial. You have been given all these telephone conversations,  
15 recordings of them. You understand the timeline.

16                  And where is the problem given the fact that every  
17 one of these witnesses was not a Government agent, there is no  
18 evidence that they were Government agents or had any  
19 instructions from the Government at the time the conversations  
20 about the robbery took place?

21                  MR. COREY: Yes, Your Honor. I think there is two  
22 very important responses to that. First of all, I think your  
23 question goes to what is on the recordings. And the  
24 recordings are by no means the universe of conversations that  
25 the informants had with Mr. Mohamadi. In fact, the recordings

1 only encompass conversations with one of three informants. We  
2 have no idea what the context is of the conversations with the  
3 other two informants.

4 Now, we also know that with the third informant that  
5 is on the recordings, that was only a subset of the  
6 recordings.

7 Now, I know the Government has represented that  
8 that's a lot of the conversations. I don't know that to be  
9 the case. I do know from the recordings, which we have spent  
10 hours and hours and hours reviewing, is that at the very first  
11 conversation on those recordings it's clear that they have  
12 already had other conversations.

13 Now, if he was an agent--

14 THE COURT: They have had conversations, but what  
15 evidence is there that there is any kind of Government action  
16 which makes any of these three people a Government agent?

17 MR. COREY: Well, Your Honor, I think that's exactly  
18 why we need to be heard on this issue and in fact need to hear  
19 testimony on it, because I cannot tell you when the agents--

20 THE COURT: What case can you cite to me that  
21 requires a hearing with the witnesses testifying when there is  
22 not a scintilla of evidence that the Government has sponsored  
23 any of these witnesses at the critical time?

24 MR. COREY: Well, We submit, Your Honor, this is  
25 precisely like the Lentz case where there was an evidentiary

1 hearing. And in fact--

2 THE COURT: The Lentz case factually couldn't be any  
3 different than this case. Judge Ellis had a hearing and it  
4 was clear that Jackson became a Government agent at some time.  
5 And what else Judge Ellis did was determine by the facts when  
6 that occurred and he struck anything that was said after that  
7 time and allowed evidence before that time.

8 I understand the Lentz case, I think it was  
9 correctly decided, but here there is no evidence that there  
10 was any Government involvement when the statements were made.  
11 Right?

12 MR. COREY: Yes, Your Honor, that's exactly why we  
13 are requesting the opportunity for a hearing, because, again,  
14 those recordings are only a subset of the conversations. They  
15 don't speak at all to the other two inmates.

16 So, we're in a position where we cannot point to  
17 evidence. And the Government seems to be saying, well, here,  
18 we gave you some of the conversations, there, end of story.  
19 And, frankly, I cannot cite to evidence that--

20 THE COURT: Well, they gave you all the  
21 conversations that were recorded, right?

22 MR. COREY: As far as I understand, yes.

23 THE COURT: All right. And you are going to get  
24 Jencks and Giglio and all that stuff, that has already been  
25 exchanged or is that coming up?

1                   MR. WALUTES: It comes up on Wednesday, Your Honor.  
2 The agreement that the Federal Defender entered into in May of  
3 '09 was three days. The Court expanded it to a week at the  
4 time of the bill of particulars.

5                   THE COURT: All right.

6                   MR. COREY: I would like to address one point that I  
7 think maybe I haven't hit as hard as I think is important to  
8 hit here, that this is a new issue regarding consciousness of  
9 guilt.

10                  Now, I am sure you have read the pleadings where our  
11 point is that the Government cannot use conversations that its  
12 informants had with the defendant while he was represented on  
13 charges, on the robbery charges as consciousness of guilt as  
14 to those charges. And that's our reading of Lentz and  
15 Moulton, it goes exactly to that point.

16                  THE COURT: But the Government is going to introduce  
17 any admissions as having been made at a time prior to the  
18 conversations about the subsequent counts regarding the  
19 threats or attempts to kill the witness, right?

20                  Do you understand-- I mean, there is a distinction  
21 there. So, the Government's argument is, I get to use the  
22 admissions regarding the robbery because they were made at a  
23 time when either the witness was not involved with the  
24 Government, was not an agent; or, subsequently the  
25 conversations I am going to admit regarding the attempts to

1 hire them to kill the witness, those are going to come in  
2 separately as to the additional counts. Right?

3 MR. COREY: Well, I understand, yes, Your Honor,  
4 that's what they have represented in their pleadings as to  
5 what they would show. But again, we have only their  
6 representation and then a subset of recordings to go on.

7 So, we honestly do not know the universe of what  
8 happened.

9 THE COURT: Well, if the Government does something  
10 other than what they have represented, then that becomes an  
11 issue at trial. There is an objection made, it becomes an  
12 issue at trial. I have to decide whether I am going to  
13 declare a mistrial and sanction the Government at that stage,  
14 right?

15 MR. COREY: Certainly.

16 THE COURT: But isn't my job now to look at what's  
17 out there, what evidence I have and make a decision based on  
18 cases like the Lentz case and decide preliminarily now, you  
19 know, with the information that I have?

20 MR. COREY: Well, certainly your point is taken,  
21 Your Honor, but I think that it is not that much additional  
22 burden to hold a hearing and have the Government's witnesses  
23 testify and just simply ask them, okay, what was the nature of  
24 the conversations, when did you become an agent for the  
25 Government and, you know, what questions did you ask the

1 defendant.

2                   So, in terms of what practically can be done, I  
3 don't think it's that much of an additional burden upon the  
4 Court to consider that issue at that time rather than waiting  
5 until trial and having to declare a mistrial.

6                   THE COURT: All right, thank you, Mr. Corey.

7                   Mr. Walutes.

8                   MR. WALUTES: Your Honor, there is one point I  
9 wanted to make. I am sorry, I tried to get paper in front of  
10 the Court this week after I saw their motion on Monday, and I  
11 omitted making it in my written pleading. And that is the  
12 Government doesn't concede that the state armed robbery  
13 offense is the same as any charge in the ten-count indictment  
14 before this Court.

15                   As the Court is well aware, in Texas versus Cobb,  
16 the Sixth Amendment is offense specific. And the interstate  
17 interference with commerce has nothing to do with an armed--  
18 It does have something to do with armed robbery, it is shared  
19 elements, but it is not the same charge. And so, we don't  
20 concede that.

21                   Lentz, as the Court is well aware, is a federal case  
22 from its inception, and it involves a federal cooperator who  
23 had a pre-existing cooperation agreement with the Government  
24 before he ever came into contact with Mr. Lentz.

25                   And then, I think actually Moulton versus Maine

1 helps the Government, Your Honor. In that case it is the co-  
2 defendant who is encouraged by law enforcement to make phone  
3 calls and is going in and saying to the defendant, now remind  
4 me all the things we did. Again, nothing to do with our case.

5 The first two Fairfax witnesses are inmates, are  
6 very tangentially told about the robbery. One of them doesn't  
7 even understand there to be a robbery. He thinks that the  
8 taxicab driver is a witness to a different robbery. The other  
9 has absolutely no detail.

10 What they will testify to will be about the efforts  
11 to recruit them to murder someone.

12 And then witness three is incredibly well  
13 documented, Your Honor. I think this case when we go up on  
14 appeal will serve to show that the instructions to cooperators  
15 can be well followed. Because as the defendant's counsel just  
16 said, there are hours and hours and hours of transcripts, and  
17 there is no verbiage proffered to this Court of any violation  
18 of the instructions.

19 Moulton goes through and dices those recordings,  
20 Your Honor, and shows the things that caused the Court  
21 concern. And here nothing is being offered to this Court.

22 And while the defense counsel in their motion says  
23 that there is no date specific on when the robbery was  
24 discussed, the Court has seen the transcript now, and it says  
25 under oath that it occurred in September, two months before

1 the testimony, and a month before a relationship with the  
2 federal government. And that there is nothing else offered  
3 since September.

4 While the date is not specific, it's misleading to  
5 say that it isn't nailed down in sworn testimony. We would  
6 ask the Court to deny the defense motion.

7 THE COURT: Well--

8 MR. COREY: Pardon me, Your Honor.

9 THE COURT: Yes, sir.

10 MR. COREY: One additional point. We would ask that  
11 the Court at the least withhold ruling until we get Jencks and  
12 Giglio materials, until we have had a chance to review that  
13 material.

14 THE COURT: All right. Well, I will allow you to  
15 renew the motion if you believe there is support for it. But  
16 presently I don't find that there is any evidence that would  
17 require a hearing. The case law doesn't require that each of  
18 these potential witnesses be vetted under oath prior to their  
19 testimony, unless you get a situation like the Lentz case  
20 where you have a professional cooperator.

21 And I don't see any evidence that there is any Sixth  
22 Amendment violation here, any necessity to sever any of these  
23 counts, and that any of these witnesses will be violating Mr.  
24 Mohamadi's Sixth Amendment rights during the course of their  
25 testimony.

1                   I will allow you to renew the motion if you get  
2 something next Wednesday, I guess, and we will hear it in an  
3 expedited manner.

4                   There is a 404(b) motion that has been made as well  
5 by the Government where they indicate that they believe that  
6 the weapon used in these robberies was recovered shortly  
7 after, within a couple of weeks of the robbery.

8                   Is that on for this morning as well?

9                   MS. MINTER: It is not on for this morning, Your  
10 Honor. I think that we will need to address that issue in  
11 terms of to what extent that evidence is admissible.

12                  I would certainly submit that it is possible that  
13 some of what has been presented to us will be admissible and  
14 some would not.

15                  I would ask the Court for the opportunity to review  
16 that notice further and file at a later time.

17                  THE COURT: All right. Then perhaps you can put it  
18 on for next Friday and respond in writing to that.

19                  MS. MINTER: Thank you, Your Honor.

20                  THE COURT: And we will wait for the 404(b). All  
21 right, anything else this morning?

22                  MS. MINTER: Your Honor, I would just advise the  
23 Court that Mr. Mohamadi would ask to address the Court with  
24 regard to some of his motions.

25                  THE COURT: Come forward, Mr. Mohamadi.

1                   You have got some motions you want to make?

2                   THE DEFENDANT: Yes, Your Honor, good morning. I  
3 was just wondering if it is possibly that I can orally submit  
4 them and argue them if Mr. Walutes feels comfortable arguing  
5 with--

6                   THE COURT: Well--

7                   THE DEFENDANT: It's brief motions.

8                   THE COURT: They are better off put in writing so  
9 the record reflects that you have actually filed the motions,  
10 and also so the Government has time to review them. And why  
11 don't you identify what they are and submit them in writing  
12 and with copies to the Government, and we will hear them next  
13 Friday.

14                   What are the nature of the motions?

15                   THE DEFENDANT: Just pretrial motions. And would  
16 you like the names of the motions?

17                   THE COURT: Yes.

18                   THE DEFENDANT: I have a motion to compel all  
19 evidence favorable to defendant.

20                   Motion for disclosure of grand jury and jury  
21 selection process, records and stuff.

22                   Motion to dismiss based on Government's destruction  
23 of exculpatory evidence.

24                   Motion to strike surplusage from the indictment.

25                   Defendant's motion to dismiss the indictment as

1 being defective for not including an element of the statute.

2 THE COURT: All right.

3 THE DEFENDANT: And the final one is a motion to  
4 suppress wiretap evidence and fruits thereof in violation of  
5 Title III of the Omnibus Crime Control and Safe Streets Act of  
6 1968.

7 THE COURT: All right. Well, those are all very  
8 substantive motions that the Government is going to need time  
9 to respond to.

10 So, if you will file them in writing through your  
11 counsel, and we will hear those next Friday. All right.

12 THE DEFENDANT: Okay. Thank you, Your Honor.

13 THE COURT: All right, then we are--

14 MR. WALUTES: Your Honor, before the Court breaks,  
15 could I ask, does the Court intend to be in session on Friday,  
16 on the 13th of March? I just for scheduling purposes am being  
17 pressured to ask the Court this question.

18 THE COURT: I think we will go--

19 MR. WALUTES: The 12th, I am sorry.

20 THE COURT: -- a half day. I will probably hear the  
21 normal Friday morning docket and then we will go in afternoon.

22 MR. WALUTES: Thank you, Your Honor. I appreciate  
23 that. I have nothing else, Your Honor.

24 I am sorry for the interruption.

25 THE COURT: No, that's all right.

1                   MR. WALUTES: Thank you.

2                   THE COURT: All right, then we are in recess, and we  
3 will come back shortly for our civil docket.

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5                   HEARING CONCLUDED  
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19                   I certify that the foregoing is a true and  
20 accurate transcription of my stenographic notes.

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22  
23                   /s/ Norman B. Linnell  
24                   Norman B. Linnell, RPR, CM, VCE, FCRR  
25